

EXHIBIT 28



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration  
Rockville MD 20857

To all NDA and ANDA holders and applicants

APR 10 1987

Dear Sir or Madam:

This is another in a series of letters intended to provide informal notice to all affected parties of developments in policy and interpretation of the Drug Price Competition and Patent Term Restoration Act of 1984. This letter deals with an issue about which a number of questions have arisen, namely the statutory mechanism by which ANDA applicants may make modifications in approved drugs if the modifications require the submission of clinical data. For example, an applicant may wish to obtain approval of a new indication for a listed drug that is only approved for other indications. If the applicant has an approved ANDA for the approved indications, agency policy permits the applicant to submit a supplemental application that contains reports of clinical investigations needed to support approval of the new indication. (Because such a supplement would require the review of clinical data, FDA would process it as a submission under section 505(b) of the Federal Food, Drug and Cosmetic Act.)

A similar case may arise where an applicant wishes to seek approval of a modification of an approved product but has no interest in marketing the drug in its originally approved form. Assuming that clinical data were required for approval, the statute could be interpreted to require such an applicant to first manufacture, and obtain approval of an ANDA for, the listed drug's approved form and then file a 505(b) supplement to the approved ANDA containing the clinical data to obtain approval of the modification. If the applicant did not first obtain an ANDA for the approved form, the applicant could be required to submit a full NDA for modification and duplicate the basic safety and effectiveness studies conducted on the listed drug.

FDA has concluded that such an interpretation is inconsistent with the legislative purposes of the Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 Amendments), because it would serve as a disincentive to innovation and would require needless duplication of research.

FDA believes that a more consistent and less burdensome interpretation of the 1984 Amendments is to allow a generic applicant to submit a 505(b) "supplement" (a form of NDA) for a change in an already approved drug that requires the submission of clinical data, without first obtaining approval of an ANDA for a duplicate of the listed drug. This submission would include data only for those aspects of the proposed drug that differ from the listed drug. Changes in already approved drugs for which such applications will be accepted include changes in dosage form, strength, route of administration, and active ingredients for which ANDA suitability petitions cannot be approved because studies are necessary for approval as well as new indications. Like similar supplements to approved ANDAs, these applications will rely on the approval of the listed drug together with the clinical data needed to support the change. The applicant will thus be relying on the approval of the listed drug only to the extent that such reliance would be allowed under section 505(j): to establish the safety and effectiveness of the underlying drug.

FDA believes that it would be inconsistent with the policies of the 1984 Amendments to allow these applications to rely on the approval of a listed drug without due regard for the listed drug's patent rights and exclusivity. Therefore, an application that relies in part on the approval of a listed drug and in part on new clinical data will, for this purpose, be considered an application described in section 505(b)(2) and must contain a certification as to any relevant patents that claim the listed drug. In addition, the date of submission and effective approval of these applications may, under section 505(c)(3), be delayed to give effect to any patent or period of exclusivity accorded the listed drug.

Because these submissions will be reviewed as applications under section 505(b), they will be subject to the statutory and regulatory requirements applicable to such applications, including the patent filing requirements of sections 505(b) and (c). These submissions also may be eligible for three years of exclusivity under sections 505(c)(3)(D)(iii) and (iv) and 505(j)(4)(D)(iii) and (iv). These applications should be submitted to the appropriate review division in ODDR/OBRR for review and final action.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Paul Parkman", with a stylized, flowing script.

Paul D. Parkman, M.D.  
Acting Director  
Center for Drugs and Biologics